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HUMAN RIGHTS COMMITTEE

Sixty-sixth session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 1775th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 26 July 1999, at 3 p.m.

Chairperson: Ms. EVATT
(Vice-Chairperson)

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* The summary record of the second part (closed) of the meeting appears as document CCPR/C/SR.1775/Add.1.

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The meeting was called to order at 3.15 p.m.

GENERAL COMMENTS OF THE COMMITTEE (agenda item 5) (continued)

Draft general comment on article 12 of the Covenant (continued) (CCPR/C/21/Add.9/Rev.1)

1. The CHAIRPERSON invited members to resume their consideration, paragraph by paragraph, of the draft general comment on article 12 of the Covenant (CCPR/C/21/Add.9/Rev.1).

Paragraph 20

2. Mr. KLEIN (Rapporteur) said that the paragraph reflected the Committee's Views on the Stewart v. Canada case. The first version of the draft comment had included a quotation from those Views, which had now been deleted at the Committee's request. However, some reference to the case was appropriate, preferably by means of a footnote at the end of the first sentence.

3. Mr. POCAR, referring to the fourth sentence, questioned the need for the phrase "at the very least", and also the meaning of "nationality in a formal sense" and "claims in relation to a given country".

4. Mr. KLEIN (Rapporteur) replied that the fourth sentence reflected the exact wording of the Committee's decision on the Stewart v. Canada case. Since there had been diverging views on that case, he had considered it wise to adhere to the text of the decision and not to elaborate any further.

5. The CHAIRPERSON said that, if she heard no objection, she would take it that, in the light of that explanation, the Committee wished to adopt paragraph 20, with the inclusion of a footnote referring to the Stewart v. Canada case.

6. It was so decided.

Paragraph 21

7. Mr. KLEIN (Rapporteur) said that, in response to requests by Committee members he had endeavoured in the first few sentences to describe the concept of arbitrariness instead of relying, as in the first draft, on the lengthy explanation given in the Committee's general comment 16 on article 17. He suggested the deletion of the bracketed word "ordinarily" in the last sentence.

8. Following a proposal by the Chairperson, he suggested that a slightly amended version of the last sentence of paragraph 18 should be transposed to the end of paragraph 21. It should read: "Furthermore, a State party must not, by expelling a person to a third country, arbitrarily prevent that person, against his or her will, from returning to his or her own country".

9. Mr. KRETZMER said that the last part of paragraph 21 was rather misleading, since it reintroduced the concept of nationality and might imply that there was a distinction between the rights of nationals and non-nationals with regard to return to their own country. He therefore suggested that the last part of the paragraph should be deleted or amended.

10. The CHAIRPERSON said she wondered whether Mr. Kretzmer's concerns might be met by replacing the last part of paragraph 21 by one sentence which combined the concepts of stripping a person of his nationality and arbitrarily preventing his return to his own country. That would provide two concrete examples of what was deemed to be arbitrary under article 12, paragraph 4.

11. Mr. AMOR said there was another aspect of the concept of "one's own country" which the Committee had so far failed to address and which might well give rise to problems in the future. Sometimes it might be in a State party's interests to affirm that a person came under its jurisdiction, for instance in connection with criminal or tax problems. He was aware of a case in Germany in which a person's claim that he was no longer subject to German law on the grounds that he had renounced his German nationality had been rejected owing to his long-standing links with the country prior to the reliquishment of his nationality.

12. Mr. KLEIN (Rapporteur) said that the Committee had never dealt with such cases, and pointed out that it had agreed to confine itself to its jurisprudence in the draft general comment. Furthermore, under German law a person could only renounce German nationality if he acquired another nationality and would thereafter be recognized as a national of that other State. He failed to see the relevance of Mr. Amor's remarks in the present case; the text was based on article 12, paragraph 4, whose point of departure was the right to enter one's own country.

13. Mr. POCAR questioned the appropriateness of the term "all legislative restrictions" in the third sentence. Article 12, paragraph 3, allowed for restrictions with respect to the rights protected under article 12, paragraphs 1 and 2, but not in relation to paragraph 4. He therefore suggested that "all legislative restrictions" should be replaced by "the latter" or "the law itself".

14. Mr. KRETZMER said he was not entirely happy with the solution proposed for the end of the paragraph. The word "arbitrarily" was employed too often in the paragraph, without a satisfactory definition for the term "arbitrariness".

15. Ms. CHANET endorsed Mr. Pocar's proposed amendment, but pointed out that with the deletion of the reference to restrictions in the third sentence, the fourth sentence no longer made sense.

16. Mr. KRETZMER suggested, in an effort to meet Mr. Pocar's and Ms. Chanet's concerns, that it might be more appropriate to refer to legislative provisions. Thus "legislative restrictions" and "They" in the third and fourth sentences respectively should be replaced by "legislative provisions".

17. Mr. POCAR suggested that it would be more accurate if the fourth sentence read: "The application of these legislative provisions must be, in any event, reasonable and proportionate in the particular circumstances".

18. Ms. CHANET said that such an amendment was merely superficial and did not resolve the problem of finding a suitable definition for arbitrariness; it relied, erroneously, on the concept of proportionality and reasonable

character in the particular circumstances. She stated her preference for the original amendment to the third sentence proposed by Mr. Pocar and the deletion of the fourth sentence.

19. Mr. KLEIN (Repporteur) said he did not share Ms. Chanet's view. A reference to the law alone would not suffice, because even if the law was in conformity with the provisions, aims and objectives of the Covenant, administrative or judicial decisions might result in its arbitrary application. The phrase "reasonable and proportionate in the particular circumstances" was important and should be retained since the law was applied to individual cases.

20. Ms. CHANET said that she had no objection to including a reference to the application of the law, but maintained that the phrase "reasonable and proportionate in the particular circumstances" was out of place since it could only be used with reference to restrictions. The fourth sentence did not make sense in the context of the paragraph and was not in line with the Covenant, which provided for proportionality where restrictions were involved. It would be more logical to delete the reference to restrictions in the third sentence and the entire fourth sentence.

21. The CHAIRPERSON agreed that the Committee did not intend to say that deprivation of the right to enter a country must be reasonable and proportionate. Rather, it intended to say that there were few circumstances in which the Committee would consider such a deprivation to be reasonable. That idea had been lost by the deletion of the following sentence, which should be restored.

22. Mr. KLEIN (Rapporteur) said he could accept a wording along those lines. It was important to introduce the terms "reasonable and proportionate" in the context of arbitrariness, since if a law was reasonable and proportionate it would not be arbitrary. He pointed out that not only the application of the law, but the law itself, could be disproportionate, as was shown in cases where laws were held to be unconstitutional.

23. Mr. AMOR said he still believed that a distinction should be drawn between application of the law and the law itself. It was true that a law could be unconstitutional, and in that context the notion of reasonableness and proportionality could be relevant. However, as he saw it, the notion of arbitrariness could only be applied to application of the law. If a certain application was arbitrary, there could be no question of it being reasonable or proportionate.

24. Mr. POCAR said that while he could agree to the concept of reasonableness in the context of paragraph 21, he was not at all in favour of the concept of proportionality. He proposed that the same formulation should be used as that adopted for paragraph 4 of general comment 16 on article 17. The text would then read along the following lines: "The reference to the concept of arbitrariness is intended to guarantee that even deprivation provided for by law should be in accordance with the provisions, aims and objectives of the Covenant and should in any event be reasonable in the particular circumstances".

25. Mr. SCHEININ supported that proposal. That formulation dealt specifically with the notion of arbitrariness, and would fit well in paragraph 21.

26. The CHAIRPERSON said that that solution appeared to be acceptable, together with the addition she had suggested, namely "... although the Committee considers that there are few circumstances in which any such deprivation could be considered reasonable". That would avoid giving the impression that the Committee thought there were deprivations of that right which might be reasonable.

27. Mr. KRETZMER suggested that the additional wording proposed by the Chairperson should be amended to read "although the Committee considers that there are few, if any, circumstances".

28. Mr. KLEIN (Rapporteur) recalled that the final sentence should read: "Furthermore, a State party must not, by stripping a person of his or her nationality or by expelling a person to a third country, prevent that person, against his or her will, from returning to his or her own country".

28. Those amendments were adopted.

30. Paragraph 21, as amended, was adopted.

Paragraph 22

31. Mr. KLEIN (Rapporteur) explained that the paragraph had been added because, during the first reading, some members of the Committee had expressed the view that the reference to the possibility of remedies should be confined to a single paragraph, rather than appearing in a number of different parts of the draft.

32. Mr. POCAR wondered whether the paragraph was necessary at all. The need to ensure that restrictions on rights were consistent with the Covenant was already fully covered in paragraphs 17 and 18. The recommendation that States should specify the remedies available was a very general one, and there did not seem to be a need to make it the subject of a separate paragraph.

33. Mr. AMOR agreed that the paragraph did not seem to add much and indeed weakened the rest of the text.

34. Mr. KLEIN (Rapporteur) said that, in his view, the notion that States should specify the remedies available should be retained, since it would be difficult to find a place for it elsewhere in the draft. The possibility of remedy was part and parcel of the right itself, and that should be made clear in the draft.

35. The CHAIRPERSON considered that the text would be more positive if the word "limit" in the second sentence was replaced by "guarantee".

36. Mr. KRETZMER suggested that another way of dealing with Mr. Klein's concern would be to make an addition to the second sentence of paragraph 3 reading "and should also provide information on remedies available when the rights in this regard are restricted". Paragraph 22 could then be deleted.

37. It was so decided.

Paragraph 16 (new draft)

38. Mr. KLEIN (Rapporteur) recalled that the first two sentences of the draft had already been adopted, and all that remained to be decided was the formulation of the examples given in the last two sentences. In the second sentence, the words "necessity test" should be replaced by "test of necessity". The third sentence should be amended to read "These conditions would not be met if, for example, an individual were prevented ...". The last sentence should read "These conditions could be met by restrictions ...".

39. Mr. YALDEN said he was a little puzzled by the use of the words "limitations on the freedom to enter" in the fourth sentence. He also found the words "could be met" too vague: examples were less useful if they illustrated something that might or might not be the case.

40. Mr. KLEIN (Rapporteur) pointed out that the fourth sentence referred only to limitations on the freedom to enter particular areas, not to complete deprivation of that freedom. Such limitations could be quite justifiable in certain circumstances.

41. Lord COLVILLE suggested that, instead of "freedom to enter", the phrase "freedom to engage in certain activities" could be used.

42. Mr. KLEIN (Rapporteur) pointed out that article 12 related only to the right to liberty of movement and choice of residence, not to the right to engage in particular activities.

43. The CHAIRPERSON said that the fourth sentence did not need to be comprehensive: it was simply intended to provide examples of limitations that might be permissible under the Covenant. She suggested that the words "enter or" should be deleted.

44. It was so decided.

45. Paragraph 16, as amended, was adopted.

46. Mr. KLEIN (Rapporteur) proposed that the headings and footnotes contained in the draft general comment should be adopted.

47. It was so decided.

48. The draft general comment on article 12, as a whole, as amended, was adopted.

The public part of the meeting rose at 4.30 p.m.